IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 28672 of 2007(L)

OS.325/2004 of PRL.M.C., KOLLAM
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PETITIONER:

BHAGIRATHI AMMA,
D/O.RAJAMMA, KOOTTINGAL KIZHAKKATHIL,
KANNIMELCHERRY, SAKTHIKULANGARA VILLAGE,
KOLLAM.

BY ADV. SRI.R.SATISH KUMAR

RESPONDENT:

MANOHARAN PILLAI,
MADHAVAM VEETIL, KUREEPUZHACHERRY,
SAKTHIKULANGARA VILLAGE, KOLLAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.28672 OF 2007

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Dated this the 27th day of September 2007

JUDGMENT

This writ petition is preferred for a direction to set aside Ext.P4 order passed by the Prl.Munsiff, Kollam and to direct her to dispose of Ext.P2 petition afresh. The main ground on which the petition has been dismissed is on the ground of delay. The court has recorded that it is conceded that the application is barred by limitation and therefore further held that as Section 5 of the Limitation Act is not applicable to the execution proceedings, delay cannot be condoned. Learned counsel for the petitioner submits before me that such a statement is erroneous because really 60 days was not over at the time of filing of the petition. Article 127 of the Limitation Act prescribes a period of 60 days for setting aside the sale and the time begins to run from the date of sale. It is submitted before me and as seen extracted from the order that the sale has taken place on 25.10.2006 and the application has been filed on 8.12.2006. If it is so, it will be only 44 days' delay and therefore the question of limitation may not arise at all.

Therefore, I set aside the order passed by the court below and remit

the matter to the court below for fresh consideration in accordance with law, after affording opportunity to both sides to adduce evidence. The court shall give notice to the decree holder as well as to the auction purchaser and then to proceed with the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-